

Patricia M. French
Senior Attorney



300 Friberg Parkway
Westborough, Massachusetts 01581
(508) 836-7394
(508) 836-7039 (facsimile)
pfrench@nisource.com

August 12, 2005

BY HAND DELIVERY AND E-FILE

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 05-27

Dear Ms. Cottrell:

Enclosed for filing, on behalf of Bay State Gas Company ("Bay State"), please find Bay State's response to the following discovery request of the Attorney General:

AG-23-6 SUPPLEMENT #2 (CONFIDENTIAL) – The Attachments to AG-23-6 SUPP #2 (CONFIDENTIAL) contain service authorizations with Bay State Contractors. Please note that while the request initially sought only those contractors that laid "unprotected coated steel mains," this request was later expanded at hearing to seek all contractor information. The Service Authorizations in Bay State's files are confidential and non-public. Accordingly, Bay State seeks confidential treatment over the Attachments in this response.

Accordingly, a single copy of each of these responses is being filed in a sealed envelope with the Hearing Officer and one copy with the Attorney General. Any other party may seek access pursuant to a mutually acceptable confidentiality agreement.

Please do not hesitate to telephone me with any questions whatsoever.

Very truly yours,

Patricia M. French

cc: Caroline O'Brien Bulger, Esq., Hearing Officer (1 copy)
A. John Sullivan, DTE (7 copies)
Andreas Thanos, Ass't Director, Gas Division
Paul E. Osborne, Ass't Director, Rates & Revenue Requirements Div.
Alexander Cochis, Assistant Attorney General (4 copies)
Service List (electronic copy)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Bay State Gas Company For Approval of Revised Tariffs And Other Rate Modifications)))))	D.T.E. 05-27
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**MOTION OF BAY STATE GAS COMPANY
FOR PROTECTIVE TREATMENT**

I. INTRODUCTION

Pursuant to 220 C.M.R. 1.04(5)(a), Bay State Gas Company (“Bay State”) hereby moves that the Department of Telecommunications and Energy (“Department”) grant protection from public disclosure, pursuant to G.L. c. 25, § 5D, for Bay State’s Attachments to Bay State’s response to AG-23-6 SUPPLEMENT #2, which seeks information regarding Bay State’s contractors responsible for installing mains and services in Bay State’s service territories. To fully comply with the supplemental request made of Bay State during the hearing, to provide the names of all contractors regardless of whether they were responsible for the installation of “unprotected coated steel mains” in Bay State’s service territory, Bay State’s response must include confidential, competitively sensitive information represented in non-public business contracts. Such information is included in Attachment AG-23-6 (L) through Attachment AG-23-6 (O). Bay State also seeks protection of all additional material provided under this information request, AG-23-6 SUPPLEMENT #2, provided such material is claimed proprietary for the same or similar reasons.

In support of its request for protective treatment, Bay State states as follows.

II. THE MATERIALS ARE A TYPE THAT MAY BE PROTECTED BY THE DEPARTMENT

A. Standard of Review

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states, in pertinent part:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

Towards this end, the Department has developed a three-part standard for assessing requests for protective treatment. First, the information for which protection is sought must constitute “trade secrets, [or] confidential, competitively sensitive or proprietary information.” Second, the party seeking protection from disclosure must overcome the statutory presumption that the public is benefited by disclosure of that information by “proving” the need for non-disclosure. Finally, the Department will protect only so much of the information as is necessary to meet the established need. See, e.g., Boston Gas Co., D.T.E. 03-40 (2003); Western Mass. Elec. Co. D.T.E. 99-56 (1999).¹

B. The Negotiated Competitive Contract Information Summarized in Attachments AG-23-6 (L) through AG-23-6 (O) Warrants the Department’s Protective Treatment

Attachments AG-23-6 (L) through AG-23 (O) provide the negotiated contracts and terms of service agreed to by the companies selected to perform installation of mains and services in Bay State’s service territory. Such information is confidential, competitively sensitive

¹ Appropriate considerations with respect to the public interest include an assessment of the interests at stake, the likely harm that would result from public disclosure of information, and the public policy implications of such disclosure. See, e.g., Essex Co. Gas Co., D.P.U. 96-105 (1996); Berkshire Gas Co., D.P.U. 93-187/188/189/190 (1994); Boston Gas Co., D.P.U. 92-259 (1993).

information and warrants the Department's protective treatment. The Department must protect the confidentiality of the terms and prices competitively negotiated for such work to ensure that Bay State receives the lowest and best offers to do the same and similar work in the future. In the event that Bay State seeks bids from outside contractors to perform such work in the future, the results of Bay State's negotiations relative to past bids for similar work will place Bay State in a compromised bargaining position, because all bidders will know the range of competing bids from the most recent process. Such knowledge could arbitrarily fix the low end of the bid range. Protection of the confidentiality of this outcome of negotiation will enhance Bay State's ability to negotiate the best bargain for the same or similar services in the future. Ultimately, public disclosure would threaten the Company's competitive stance in the market.

In addition, Bay State's contractors may well face competitive harm by the public disclosure of the information contained in the contracts, impeding the contractor's ability to negotiate more favorable terms for the provision of services to other parties. This may place these entities at a competitive disadvantage relative to other market players.

Furthermore, the public disclosure of the privately negotiated terms and conditions resulting from Bay State's contractor bid process could chill the interest of potential bidders, who may decide against participating in a future Bay State contract bid process. If fewer parties choose to engage in the process, Bay State will face increasing difficulty in negotiating the most advantageous rates for the provision of the same or similar services.

Finally, Bay State's contractors are not parties to this proceeding and cannot make their own request for protective treatment. Thus, Bay State's request for protective treatment also protects the various contractors' legitimate interests in maintaining the confidentiality of this information.

The Department has ruled that bid and private contract information is confidential and competitively sensitive information and that disclosure of such information could undermine the negotiation process. See, e.g., Fitchburg Gas and Electric Co., D.T.E. 98-121 (1999). That is why the Department previously has extended protective treatment over similar information. See id.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Bay State respectfully requests that the Department grant Bay State's Motion for Protective Treatment over Attachments AG-23-6 (L) through AG-23-6 (O) provided in response to AG-23-6 SUPPLEMENT #2.

Respectfully submitted,
BAY STATE GAS COMPANY
By its attorneys,

Patricia M. French
Senior Attorney
NISOURCE CORPORATE SERVICES
300 Friberg Parkway
Westborough, MA 01581
Tel (508) 836-7394
Fax (508) 836-7039

Robert L. Dewees, Jr.
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110
Tel (617) 345-1316
Fax (866) 947-1870

Dated: August 12, 2005

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE
TWENTY-THIRD SET OF INFORMATION REQUESTS FROM THE ATTORNEY GENERAL
D. T. E. 05-27

Date: August 12, 2005

Responsible: Danny G. Cote, General Manager

**SUPPLEMENTAL RESPONSE
CONFIDENTIAL BULK MATERIALS**

AG-23-6 Please identify by name, address, telephone number the contractor that was responsible for installing the unprotected coated steel mains that Company has replaced since 1990 in Brockton and Lawrence, and identify by name, address, telephone number the contractor that was responsible for the replacing these mains. Produce copies of the contract for the installation services.

Response: The only location where a contractor's name might be found (in many cases during this time period mains and services were installed by company employees) would be on the original project work order. That said, these work orders are not sorted by pipe type or by cathodic protection status nor are they in any database. Therefore, trying to find any specific work order for a section of coated unprotected pipe would require an enormous manual effort that would be burdensome to undertake.

Bay State does not have copies of installation contracts from the 1950's and 1960's when this coated unprotected pipe was installed.

Supplemental Response:

The response to this request includes commercially sensitive, competitively proprietary and non-public information that is appropriate for protection from public disclosure. Accordingly, the CONFIDENTIAL attachments hereto are filed in single copy to the Hearing Officer, accompanied by a Motion for Protective Treatment. Any other party may seek access pursuant to a mutually-agreed upon confidentiality agreement.

Attached as a supplement to the above request please find the following information, which includes all contractors' contact information :

Attachment AG-23-6 (A) (CONFIDENTIAL): Purchase orders dated April 1, 1998 through March 2001. (For this period of time there existed only

purchase orders. Since then Bay State has used General Service Agreements along with purchase orders and service authorizations.)

Attachment AG-23-6 (B) (CONFIDENTIAL): General Services Agreement
– Gas - #6031334 (Brockton)

Attachment AG-23-6 (C) (CONFIDENTIAL): General Services Agreement
– Gas - #6031336 (Brockton)

Attachment AG-23-6 (D) (CONFIDENTIAL): General Services Agreement
– Gas - #6031331 (Lawrence)

Attachment AG-23-6 (E) (CONFIDENTIAL): General Services Agreement
– Gas - #6031335 (Lawrence)

Attachment AG-23-6 (F) (CONFIDENTIAL): General Services Agreement
– Gas - #3723

Attachment AG-23-6 (G) (CONFIDENTIAL): General Services Agreement
– Gas - #3751

Attachment AG-23-6 (H) (CONFIDENTIAL): General Services Agreement
– Gas - #3764

Attachment AG-23-6 (I) (CONFIDENTIAL): General Services Agreement
– Gas - Contract #4504

Attachment AG-23-6 (J) (CONFIDENTIAL): General Services Agreement
– Gas - Contract #5778 Lawrence

Attachment AG-23-6 (K) (CONFIDENTIAL): Service Authorizations dated September 1, 2004 through March 31, 2006.

Copies of the General Services Agreements for the period 4/1/04 through 3/31/06 are being gathered.

Supplemental Response #2:

For the reasons set forth in Bay State's attached Motion for Protective Treatment, dated August 12, 2005, relative to contractor information, Bay State deems Attachments AG-23-6 (L) through AG-23-6 (O) to be confidential. Accordingly, the attached CONFIDENTIAL materials are filed in single copy to the Hearing Officer and single copy to the Attorney General. Any other party may seek access pursuant to a mutually-agreed upon confidentiality agreement.

The following is a list of the Confidential Attachments to Supplement #2:

Attachment AG-23-6 (L) (CONFIDENTIAL): Service Authorizations dated April 1, 2004 through March 31, 2006, including revisions.

Attachment AG-23-6 (M) (CONFIDENTIAL): Service Authorizations dated April 1, 2004 through March 31, 2006, including revisions.

Attachment AG-23-6 (N) (CONFIDENTIAL): Service Authorizations dated April 1, 2004 through March 31, 2006, including revisions.

Attachment AG-23-6 (O) (CONFIDENTIAL): Service Authorizations dated April 1, 2004 through March 31, 2006, including revisions.